

IN THE SUPREME COURT OF THE STATE OF DELAWARE

PRENTICE L. TRIPLETT,	§
	§ No. 725, 2009
Plaintiff Below-	§
Appellant,	§
v.	§ Court Below—Superior Court
	§ of the State of Delaware
	§ in and for New Castle County
DR. ROGERS, et al.,	§ C.A. No. 09C-10-129
	§
Defendants Below-	§
Appellees.	§

Submitted: April 16, 2010

Decided: June 1, 2010

Before **STEELE**, Chief Justice, **JACOBS** and **RIDGELY**, Justices.

ORDER

This 1st day of June 2010, upon consideration of the briefs on appeal and the record below, it appears to the Court that:

(1) This is an appeal from the Superior Court’s November 20, 2009 order dismissing the complaint of plaintiff-appellant Prentice L. Triplett for failure to prosecute. The Superior Court based its decision on what it believed was Triplett’s failure to pay the required filing fee of \$2.04 on or before November 9, 2009.¹ Because Triplett’s appeal is interlocutory, it must be dismissed.

¹ Triplett, a prison inmate, was advised by the Superior Court on October 20, 2009 that he would have to pay 20% of the average daily balance in his inmate account for the past six months in order for his case to proceed.

(2) The record reflects that Triplett complied with the Superior Court's order, but, due to a misunderstanding between Triplett and the Prothonotary's Office, the filing fee was applied to Triplett's criminal fines rather than to the filing fee in his civil case. On December 9, 2009, Triplett filed a motion for reconsideration or reargument of the Superior Court's November 20, 2009 order. Prior to the Superior Court's disposition of the motion, Triplett filed the instant appeal.

(3) The test for whether an order is final and, therefore, ripe for appellate review is whether the trial court has clearly declared its intention that its order be its "final act" in a case.² If there is no "finality . . . of the essential questions involved," then the matter is interlocutory and not ripe for appeal.³ At the time the instant appeal was filed, Triplett's motion for reconsideration was still pending. As such, the appeal is interlocutory and not ripe for review by this Court.

(4) Since Triplett has not complied with the requirements for interlocutory review of the Superior Court's November 20, 2009 order,⁴ his appeal must be dismissed.

² *J.L. Kislak Mortgage Corp. of Delaware v. William Matthews, Builder, Inc.*, 303 A.2d 648, 650 (Del. 1973).

³ *Showell Poultry, Inc. v. Delmarva Poultry Corp.*, 146 A.2d 794, 796 (Del. 1958).

⁴ Supr. Ct. R. 42.

NOW, THEREFORE, IT IS ORDERED that the within appeal is DISMISSED pursuant to Supreme Court Rules 29(b) and 42. In the event that Triplett files an appeal from a final judgment in this case, the filing fee in that appeal is waived.

BY THE COURT:

/s/ Henry duPont Ridgely
Justice